



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 02
IB-730(ND)/2021

IN THE MATTER OF:

Mr. Prashant Kumar

.....OPERATIONAL CREDITOR

Vs.

M/s. S-Tech Hotels & Resort India Pvt. Ltd.

.....CORPORATE DEBTOR

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 06.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-730(ND)/2021
is **dismissed**.

**-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

**-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IB-730(ND)/2021

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Mr. PRASHANT KUMAR

..... Operational Creditor

VERSUS

M/s. S-TECH HOTELS & RESORT INDIA PRIVATE LIMITED

..... Corporate Debtor

Order Delivered On: 06.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Kunal Godhwani, Adv.

For the Respondent : Mr. Deepak Kapoor, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Prashant Kumar, the Applicant/Operational Creditor on 26.02.2021, before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution

Mr. Prashant Kumar Vs. M/s. S-Tech Hotels & Resort India Pvt. Ltd.

IB - 730(ND)/2021

Date of Order: 06.09.2023



Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. S-Tech Hotels & Resort India Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 1,19,99,445/- (Rupees One Crore Nineteen Lakh Ninety Nine Thousand Four Hundred and Forty Five Only) as on 01.03.2018.

2. It is the case that the Applicant is the younger brother of Sh. Umesh Prasad Singh. The family of Sh. Umesh Prasad Singh and family of Sh. Indrajeet Singh and Sh. Sanjay Yadav (brothers) were known to each other and had friendly relations. The brothers namely Sh. Indrajeet Singh and Sh. Sanjay Yadav, (Directors of Corporate Debtor) brought the proposal to Sh. Umesh Prasad Singh regarding investment in the Corporate Debtor company as they wanted to purchase "Corbett Hill View Resort" at Haldwani, Nainital, which was going to be auctioned by Bank of Baroda and can be bought at a low price. The Directors of the Corporate Debtor assured that Sh. Umesh Prasad Singh and its companies/ its Directors and family members, the Operational Creditor being the brother of Sh. Umesh Prasad Singh, shall be made as director in the Corporate Debtor Company. Further, it was assured that the shares of the proportionate value shall be allotted, at the time of issue of shares, in favour of the Operational Creditor also. The Operational Creditor agreed to the proposal and to invest the amount and make payments to the Corporate Debtor.
3. It is the case of the Applicant that the payments were made by the Operational Creditor as well as an investment in M/s. S-Tech Hotels & Resort India Private Limited, the Respondent/Corporate Debtor herein for purchase of Corbett Hill View Resort belonging to one Mr. Kailash Chand Sati on the assurance that the Applicant/its family members shall be made as Director of the Corporate Debtor Company and a proportionate share shall be allotted in favour of the Operational Creditor and its other concerns and family members at the time of issue of shares of the Corporate Debtor. At the time of the purchase of the Corbett Hill View Resort in the auction by Bank of Baroda, the Brother

Mr. Prashant Kumar Vs. M/s. S-Tech Hotels & Resort India Pvt. Ltd.

IB - 730(ND)/2021

Date of Order: 06.09.2023



of the Operational Creditor was made one of the Executant/purchaser in the sale and he was also designated as Chief Executive Officer (CEO) of the Corporate Debtor. Subsequently, Shri Umesh Prasad Singh/his family members were also Directors of the Corporate Debtor Company. However, no shares were issued. Shri Umesh Prasad Singh was removed as a Director of the Corporate Debtor Company without any notice. This fact came to the knowledge of the Applicant/Shri Umesh Prasad Singh in the last week of February, 2018 and the said Shri Umesh Prasad Singh demanded the return of money from the Corporate Debtor. The Applicant issued a demand notice dated 28.10.2020 to the Respondent Company under Section 8 of IBC, 2016 calling upon them to pay a sum of Rs. 1,19,99,445/- (Rupees One Crore Nineteen Lakh Ninety Nine Thousand Four Hundred and Forty Five Only) which is being the sum equivalent to the value of the outstanding amount. The said demand notice was received by the Respondent/Corporate Debtor on 29.10.2020 and the reply was given by the Respondent/Corporate Debtor on 12.11.2020 without any supporting documents. The Respondent/Corporate Debtor did not deny the liability in the said reply. The Applicant has claimed that the Respondent/Corporate Debtor had admitted and acknowledged the debt/amount in its annual returns and further the Respondent/Corporate Debtor failed to make the payment to the said amount and no notice has been given by the Respondent/Corporate Debtor disputing the unpaid operational debt, hence, this application under Section 9 of the Code is filed.

4. The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant. The Respondent has denied that the Applicant has made an investment in the Respondent Company and the shares were allotted to the Applicant for the amount invested. The Applicant has not enclosed any proof or acknowledgment to show that the amount paid/deposited towards investment is for the purchase of shares. The Applicants have not filed any proof or evidence about any assurance given by the Respondent Company or its Directors or family members of Directors that the Applicant Company will become the



Directors of the Respondent Company or the shares of the proportionate value shall be allotted at the time of issues of shares in favour of the Applicant.

5. The Respondent/Corporate Debtor has submitted in the Reply dated 12.11.2020 to the demand notice dated 29.10.2020 that the main defence of the Corporate Debtor is based on the existence of a prior dispute before the issuance of the Section-8 demand notice. On the ground that various complaints and cases have been initiated wherein the Operational Creditor and the Corporate Debtor are accused/co-accused, which are as follows:
- i. A legal notice dated 08.12.2017, was served (through speed post and email) by Shri Inderjeet Singh, Shareholder and Ex-Director of the Company, through his Advocate Mr. Gopal Krishan Yadav, on M/s. Safety Energy Solutions Private Limited, Shri Umesh Prasad Singh (Director), Shri Prashant Kumar Singh (Director), Shri Raj Kumar Sharma (Director), Shri Satya Dev Madan (Director) and Shri Ishan Mishra (the then Director) under Sections 406, 418, 420, 34, 120B of the Indian Penal Code for false inducement to lend money for future business prospects of M/s. Safety Energy Solutions Private Limited with false assurance and promise to share profits arisen out of the business of M/s. Safety Energy Solutions Private Limited and intentional failure to return back the money lent by Mr. Inderjeet Singh to M/s. Safety Energy Solutions Private Limited, with the sole purpose of defrauding him.
 - ii. A police complaint dated 11.03.2018, filed with D.C.P. (West), Rajouri Garden, New Delhi, by Shri Sanjay Yadav, Director and Shareholder of the Company, as Complainant against Mr. Umesh Prasad Singh, under Section 420, 465, 468, 469 of the Indian Penal Code and relevant provisions of the Information Technologies Act, 2000, for Forgery, Cyber Crime, malafide attempt to cause loss to the Complainant, by fraudulently accessing and providing to Tata Capital Financial Services



Limited, with personal and privileged information and documents, including the Income Tax Returns of Complainant along with the forged Signatures of the Complainant on the alleged loan documentation executed with the Tata Capital Financial Services Limited.

- iii. A Case filed by Mr. Balwant Singh, father of Mr. Inderjeet Singh, the Shareholders of the Company against M/s. Safety Energy Solutions Private Limited under Section 138 of the Negotiable Instruments Act. The case is pending before the Court of Hon'ble Chief Metropolitan Magistrate, South-West DWK (case no. DLSWOZ- 015254-2018 and filing date 02.04.2018) for charges against bouncing of Cheque involving a disputed amount of Rs. 2,00,00,000/- (INR Two Crores Only).

We have perused the legal notice dated 08.12.2017, Case filed under Section 138 of the Negotiable Instruments Act and police complaint dated 11.03.2018, we are satisfied that the Corporate Debtor had raised certain issues relating to various complaints, much before the issue of the statutory demand notice under Section 8 of the Code by the Operational Creditor. It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument it would suffice for the Adjudicating Authority to reject the application filed under Section-9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

6. The Respondent/Corporate Debtor has submitted that the Applicant is not an Operational Creditor within the meaning of Section 5(20) of IBC, 2016 and the claim against the Corporate Debtor is not an operational debt within the definition of Section 5(21) of IBC, 2016, because of the fact that the Applicant has not provided goods and services to the Respondent/Corporate Debtor and no such proof has been placed on record. The Respondent in the reply affidavit have raised a contention that the present application filed under Section 9 is barred by limitation



in terms of the Limitation Act, 1963. According to the Applicant, the debt fell due on 01.03.2018 and there is no evidence or acknowledgment placed on record by the Applicant along with the application and to show that the share allotment was to be made on 01.03.2018.

7. The dispute in this application is whether the present application is within the Limitation period to initiate the CIRP against the Corporate Debtor or not.
8. The Respondent/Corporate Debtor has submitted that the alleged share application money was paid by the Applicant in the years 2014, 2015 and 2016 and the due debt for refund of the said money started from 29.07.2014 and ended on 04.10.2016.
9. Furthermore, no evidence is produced on record by the Operational Creditor to show that the Corporate Debtor either acknowledged the debt within the period of three years from the date of default of the outstanding amount in terms of Section 18 of the Limitation Act, 1963 or paid any amount to the Operational Creditor within the period of three years in terms of Section 19 of the Limitation Act, 1963 which can enhance the limitation period to initiate the CIRP against the Corporate Debtor as laid down by the Hon'ble Supreme Court in **C. Shivakumar Reddy and Anr. Vs. Dena Bank (now Bank of Baroda)** Civil Appeal No. 1650 of 2020.
10. Article 137 of the Limitation Act, 1963 prescribes a limitation period of three years. Thus, if such period is calculated from the date of the last transaction in 2016, its limitation expires in 2019, but the present application was filed on 26.02.2021.

In view of the above, we are of the considered view that the present Application under Section 9 of the Code is barred by the limitation and is not maintainable.

11. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:



- i. The Application bearing **IB-730/ND/2021** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.

12. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**